



OFFICE OF THE POLICE COMMISSIONER  
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January 21, 2010

Memorandum for: Deputy Commissioner, Trials

Re: **Police Officer Vanessa Hicks**  
Tax Registry No. 931731  
42 Precinct  
Disciplinary Case Nos. 83446/07 & 85051/09

The above named member of the service appeared before Assistant Deputy Commissioner David S. Weisel on June 4, 2009 and was charged with the following:

**DISCIPLINARY CASE NO. 83446/07**

1. Said Police Officer Vanessa Hicks, while assigned to the 40 Precinct, on May 30, 2007, after having been repeatedly directed by New York City Police Sergeant Mary Falkner, 40 Precinct, to immediately move said officer's private vehicle from the visitor's spot located outside of the precinct, did fail and neglect without just cause to comply with said directive in a timely fashion. (As amended)

**P.G. 203-03, Page 1, Paragraph 2**

**COMPLIANCE WITH ORDERS**

2. Said Police Officer Vanessa Hicks, while assigned to the 40 Precinct, on May 30, 2007, was discourteous to New York City Police Sergeant Mary Falkner to wit: when Sergeant Falkner directed said officer to report to the Integrity Control Officer's office, said Officer replied in a belligerent and hostile manner, "No, I'm off duty and I'm leaving." (As amended)

**P.G. 203-09, Page 1, Paragraph 2**

**GENERAL REGULATIONS**

3. Said Police Officer Vanessa Hicks, while assigned to the 40 Precinct, on May 30, 2007, after having been repeatedly directed by New York City Police Lieutenant Jose Bravo and Sergeant Mary Falkner, 40 Precinct, to report to the Integrity Control Officer's office, did fail and neglect without just cause to comply with said directives. (As amended)

**P.G. 203-03, Page 1, Paragraph 2**

**COMPLIANCE WITH ORDERS**

1. Said Police Officer Vanessa Hicks, while assigned to the 42 Precinct, on July 1, 2008, was absent from her assignment from 1100 to 1440 hours and from 1850 to 1935 hours, without permission or police necessity.

**P.G. 203-05, Page 1, Paragraph 2**

**PERFORMANCE ON DUTY**

2. Said Police Officer Vanessa Hicks, while assigned to the 42 Precinct, while on-duty, on July 15, 2008, after having been directed by New York City Police Lieutenant Mark Sedran, to wear her bullet proof vest, did fail and neglect without just cause to comply with said directive in a timely manner.

**P.G. 203-03, Page 1, Paragraph 2**

**COMPLIANCE WITH ORDERS**

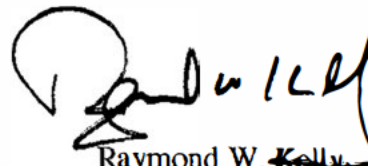
3. Said Police Officer Vanessa Hicks, while assigned to the 42 Precinct, while on-duty, on January 16, 2009, was discourteous to New York City Police Sergeant Cynthia Rodriguez, to wit: when Sergeant Rodriguez asked said Officer questions about her daily activity, said officer stated in a belligerent and hostile manner, "I'm not talking to you, I'm talking to the Lieutenant!" referring to Lieutenant Joseph Kourakos.

**P.G. 203-09, Page 1, Paragraph 2**

**GENERAL REGULATIONS**

In a Memorandum dated September 29, 2009, Assistant Deputy Commissioner Weisel found the Respondent GUILTY of Specification Nos. 1, 2 and 3 in Disciplinary Case No. 83446/07, and Not Guilty of Specification No. 1 and Guilty of Specification Nos. 2 and 3 in Disciplinary Case No. 85051/09. Having read the Memorandum and analyzed the facts of these instant matters, I approve the findings, but disapprove the recommended penalty.

The Respondent's misconduct here is egregious and was committed against different supervisors in separate commands. This behavior will not be tolerated and such merits a greater disciplinary penalty. Therefore, Respondent Hicks is to forfeit fifty (50) Vacation days *and*, is to be DISMISSED from the New York City Police Department; however, this penalty of dismissal will be held in abeyance pursuant to Section 14-115 (d) of the NYC Administrative Code for a period of one year, during which time the Respondent will remain on the force at the Police Commissioner's discretion and may be terminated at any time without a further hearing.

  
Raymond W. Kelly  
Police Commissioner



POLICE DEPARTMENT

September 29, 2009

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Vanessa Hicks  
Tax Registry No. 931731  
42 Precinct  
Disciplinary Case Nos. 83446/07 & 85051/09  
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The above-named member of the Department appeared before me on June 4 and June 8, 2009, charged with the following:

Disciplinary Case No. 83446/07

1. Said Police Officer Vanessa Hicks, while assigned to the 40 Precinct, on May 30, 2007, after having been repeatedly directed by New York City Police Sergeant Mary Falkner, 40 Precinct, to immediately move said officer's private vehicle from the visitor's spot located outside of the precinct, did fail and neglect without just cause to comply with said directive in a timely fashion. *(As amended)*

P.G. 203-03, Page 1, Paragraph 2 – COMPLIANCE WITH ORDERS

2. Said Police Officer Vanessa Hicks, while assigned to the 40 Precinct, on May 30, 2007, was discourteous to New York City Police Sergeant Mary Falkner to wit: when Sergeant Falkner directed said officer to report to the Integrity Control Officer's office, said Officer replied in a belligerent and hostile manner, "No, I'm off duty and I'm leaving." *(As amended)*

P.G. 203-09, Page 1, Paragraph 2 – GENERAL REGULATIONS

3. Said Police Officer Vanessa Hicks, while assigned to the 40 Precinct, on May 30, 2007, after having been repeatedly directed by New York City Police Lieutenant Jose Bravo and Sergeant Mary Falkner, 40 Precinct, to report to the Integrity Control Officer's office, did fail and neglect without just cause to comply with said directives. *(As amended)*

P.G. 203-03, Page 1, Paragraph 2 – COMPLIANCE WITH ORDERS

Disciplinary Case No. 85051/09

COURTESY • PROFESSIONALISM • RESPECT

1. Said Police Officer Vanessa Hicks, while assigned to the 42 Precinct, on July 1, 2008, was absent from her assignment from 1100 to 1440 hours and from 1850 to 1935 hours, without permission or police necessity.

P.G. 203-05, Page 1, Paragraph 2 PERFORMANCE ON DUTY

2. Said Police Officer Vanessa Hicks, while assigned to the 42 Precinct, while on-duty, on July 15, 2008, after having been directed by New York City Police Lieutenant Mark Sedran, to wear her bullet proof vest, did fail and neglect without just cause to comply with said directive in a timely manner.

P.G. 203-03, Page 1, Paragraph 2 -- COMPLIANCE WITH ORDERS

3. Said Police Officer Vanessa Hicks, while assigned to the 42 Precinct, while on-duty, on January 16, 2009, was discourteous to New York City Police Sergeant Cynthia Rodriguez, to wit: when Sergeant Rodriguez asked said Officer questions about her daily activity, said officer stated in a belligerent and hostile manner, "I'm not talking to you, I'm talking to the Lieutenant!" referring to Lieutenant Joseph Kourakos.

P.G. 203-09, Page 1, Paragraph 2 GENERAL REGULATIONS

The Department was represented by Krishna O'Neal, Esq. and Vivian Joo, Esq., Department Advocate's Office, and the Respondent was represented by John Tynan, Esq.

The Respondent, through her counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Disciplinary Case No. 83446/07

The Respondent is found Guilty as charged.

Disciplinary Case No. 85051/09

The Respondent is found Not Guilty of Specification No. 1 and Guilty of Specification Nos. 2 and 3.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Sergeant Mary Falkner, Lieutenant Jose Bravo, Sergeant James Kearney, Sergeant Mervin Montalban, Lieutenant Thomas Devine, Lieutenant Mark Sedran, Lieutenant Joseph Kourakos, and Sergeant Cynthia Rodriguez as witnesses.

Sergeant Mary Falkner

Falkner, a 17-year member of the Department, is currently assigned as the Assistant Integrity Control Officer (ICO) of the 40 Precinct. When she arrived at the command at approximately 1:30 p.m. on May 30, 2007, she observed two large sport utility vehicles parked in the visitor's spot on the street directly in front of the station house entrance on Alexander Avenue. The visitor's spot is designated by two yellow lines with yellow painted letters saying "visitor." The remainder of Alexander Avenue between 138th and 139th Streets is restricted parking for Department vehicles and police personnel only.

Falkner testified that when she went inside, she ran the plates of the vehicles to find out to whom they belonged. She learned that one of the vehicles belonged to the Respondent, and the other belonged to a civilian.

When Falkner observed the Respondent walk into the station house at approximately 1:45 p.m., she called the Respondent over and asked her why her car was parked directly in front of the command. The Respondent answered, "[I]t's in the visitor's spot; is that a problem?" Falkner stated that she explained to the Respondent that it was, in fact, a problem for her car to be parked there since she was a police officer, not a visitor. Falkner instructed the Respondent to move the car. According to Falkner, the Respondent walked away toward the desk area. When asked to describe the Respondent's manner, Falkner testified that the Respondent "just disregarded [her] and just continued on to what she was doing."

Falkner followed the Respondent to the desk and re-instructed her to move the car. Falkner observed the Respondent go behind the desk and look through the Radio Motor Patrol (RMP) log. The Respondent then walked around Falkner and exited the station house. Falkner followed the Respondent to see if she was complying with the orders. Instead of moving her personal vehicle, though, the Respondent crossed the street and entered an RMP.

Falkner next saw the Respondent at approximately 2:00 p.m., when the Respondent entered the station house with a prisoner. When the Respondent left the station house again, Falkner walked to the front door and saw that the Respondent's vehicle was still parked there. After changing into her uniform, Falkner had the Communications Section summon the Respondent's unit back to the station house. Falkner had to leave for a few minutes, so she was not certain whether or not the Respondent actually returned at that point.



When Falkner returned to the station house at approximately 2:45 p.m., she saw that the Respondent's car was still parked out front. Falkner parked the Department vehicle that she had been driving directly behind the Respondent's car.

At approximately 3:20 p.m., Falkner was in the muster room with Officer Beal, when she observed the Respondent come down the staircase from the locker room area. The Respondent was dressed in civilian attire at the time. According to Falkner, the Respondent walked up to her and "very sarcastically with slight anger in her tone" said "thank you very much for blocking me in." Falkner said "you're welcome," and ordered the Respondent to go to her office. Falkner testified that she "wanted to have a private conversation" with the Respondent instead of talking to her in the muster room "in front of other people." The Respondent walked out of the muster room, down three steps, and said, "no, I'm off duty." Falkner followed the Respondent and re-directed her to go to the office. The Respondent walked out of the building while stating again that she was off duty.

Falkner testified that her exchange with the Respondent took place during the change of tours, which is a very busy time. There were officers from two tours present, as well as civilian complainants. Falkner was certain that these people stopped what they were doing to see what was going on.

Falkner left the building and saw the Respondent start her personal vehicle. Falkner gestured in a "come here" fashion for the Respondent to get out of the car. The Respondent responded by looking at Falkner, shaking her finger, and shaking her head indicating no. Falkner then verbally told the Respondent to come back inside the station house, but the Respondent just shook her head again and said no. Falkner's Department vehicle was still parked directly behind the Respondent, so the Respondent moved her car onto the sidewalk. At that point, Falkner

walked from the top step of the station house stairs down to the sidewalk, coming within two feet of the Respondent's car, where she instructed the Respondent again to get out of the car and go to the office. The Respondent got out of the car "very angrily," slammed the door, "stormed" past Falkner and back into the station house, and screamed, "This is harassment."

Falkner followed the Respondent back into the station house, where she observed the Respondent behind the desk moving her hands in a "wild manner," pacing back and forth, and loudly screaming that she was being harassed and wanted the Commanding Officer's (CO) number. Sergeant Hoban, the desk officer, asked the Respondent what she was doing and ordered her to get out from behind the desk. The Respondent told Hoban, "I am looking for the CO's number. They are harassing me." Meanwhile, the Respondent ignored Falkner's repeated order to go to the ICO's office and left the desk area only after Hoban had instructed her three times to do so.

Falkner was standing in front of her office when she observed the Respondent heading toward the exit door again. At that point, the ICO, Lieutenant Bravo, came out of the office to see what was going on. When Bravo approached the Respondent, she turned around and headed back toward the desk. The Respondent continued to scream that she was being harassed, and Bravo ordered her twice to go to the office. The Respondent did not comply, and Bravo told Falkner to re order the Respondent to go to the office. When the Respondent headed again to the exit door, Falkner told her, "I am ordering you to come back into the precinct and go to the office." The Respondent said nothing and walked out of the building. Falkner described the Respondent's demeanor as angry and belligerent. Falkner left the station house at that point because she had a meeting to attend. At no point did Falkner and the Respondent come into physical contact with one another.



On cross-examination, Falkner admitted that to her knowledge no civilians complained that day about being unable to park their cars and conduct business in the precinct. Falkner did not know the last time that the spot was painted, and the paint may have been faded in May 2007. According to Falkner, there were no other cars improperly parked directly in front of the station house, but there was a Department vehicle parked across the street that may have been too close to a fire hydrant or slightly over the crosswalk line. Although Falkner has taken action against other improperly parked cars in the past, the Respondent's vehicle was the only one that she addressed that day.

Falkner testified that when the Respondent came into the station house with a prisoner at 2:00 p.m., Falkner did not speak with her about moving the car. Falkner explained that by the time she looked in the log to see which prisoner the Respondent was with, the Respondent had already left the premises. Before leaving the command for a few minutes, Falkner informed Sergeant Daniels at the desk that she had summoned the Respondent to move her personal vehicle. Falkner was gone for approximately ten minutes. Upon her return, she asked two people working in the desk area if they had seen the Respondent. Both said they had not, and Falkner did not know if the Respondent returned to the command during that period.

Falkner testified that when she walked down to the sidewalk and was standing in front of the Respondent's car, she was wearing her dress uniform. Falkner did not bang on the car to get the Respondent's attention. She spoke loudly, but she did not yell. When the Respondent got out of the car, she was saying, "I am being harassed. This is ridiculous. I am being picked on." The Respondent did not use any profane language. Falkner did not know if the Respondent had taken lost time on that day, and she believed that the Respondent was still on duty at the time of the incident.

According to Falkner, during the course of the incident, she spoke to the Respondent loudly enough to be heard over background noise, but she did not scream at the Respondent or have to be told by Bravo to calm down. Bravo neither told Falkner to get out of the way nor did he have to separate her from the Respondent.

Prior to this incident, Falkner had once given the Respondent a Command Discipline (CD). Falkner also put the Respondent in the Minor Violations Log one time in 2007, but she did not know if that occurred before or after the May 30, 2007, incident. Other supervisors had also put the Respondent in the Minor Violations Log in 2006 and 2007.

Lieutenant Jose Bravo

Bravo, a 22-year member of the Department currently assigned to the Chief of Detectives Investigations Unit, was formerly the ICO at the 40 Precinct. He testified while he was in his office at approximately 1:45 p.m. on May 30, 2007, he heard Falkner and the Respondent have a conversation about the Respondent's car being parked in front of the station house.

Bravo was in his office at approximately 3:30 p.m. that day when he heard loud talking at the front desk. When he stepped out of his office, he observed the Respondent behind the desk looking for the CO's telephone number. The Respondent was talking in a "very loud and boisterous" tone. Bravo heard Hoban instruct the Respondent to leave from behind the desk twice before the Respondent complied.

Meanwhile, Bravo heard Falkner instruct the Respondent to go to the ICO's office. The Respondent did not comply with this order, and Bravo walked in front of the Respondent. According to Bravo, when he told the Respondent to come into the office, the Respondent

replied, "no, this is harassment." At that point, Falkner repeated the directive to go to the office, but the Respondent walked toward the exit door of the station house.

Bravo testified that Falkner followed after the Respondent. Bravo described Falkner's tone of voice as authoritative, in an "I'm the boss" manner, but he at no point heard Falkner yell. Because Bravo heard the Respondent say that she was off duty and leaving, he told Falkner to put her back on duty. The Respondent and Falkner were in close proximity to each other, but Bravo did not observe any physical contact occur. However, Bravo anticipated Falkner stepping in front of the Respondent and a confrontation taking place, so he told Falkner to step aside. Falkner complied. When the Respondent exited the command, thereby disobeying the order to go to the office, Bravo called the precinct's CO. Bravo stated that the incident took place as tours were about to change, and the station house was more crowded than usual. Bravo testified that there were a lot of police officers standing around the desk area while the incident occurred. There were also civilian complainants sitting in the area.

On cross-examination, Bravo testified that he was not aware of the Respondent's duty status being changed that day. He stated that Falkner did not seem flustered or aggravated. Bravo called the CO, who instructed him to document the incident. Bravo did so and got a log number from the Internal Affairs Bureau. About 10 or 15 minutes later, Sergeant Smalls came into Bravo's office and informed him that the Respondent was outside. Bravo told Smalls that the Respondent was free to leave, and later signed an overtime slip for her. The conversation with Smalls took place about 30 minutes after the Respondent had walked out of the station house.

Sergeant James Kearney

Kearney, a 14-year member of the Department currently assigned to the Intelligence Division, was assigned to the 40 Precinct in 2007. He testified that he was behind the desk on May 30, 2007, when he heard the Respondent screaming at Falkner that she was being harassed. When the Respondent walked behind the desk, Hoban, the desk officer, ordered her two or three times to leave the area. The Respondent ultimately complied.

Kearney described Falkner's demeanor as professional and relatively calm. Kearney heard Falkner tell the Respondent to go to the ICO's office, but the Respondent was not compliant. Kearney did not hear any other supervisor instruct the Respondent to go to the ICO's office. He did not observe the Respondent and Falkner come into physical contact with one another in any way.

On cross-examination, Kearney testified that he heard the Respondent use profane language, but he did not know specifically which words she used. The Respondent was the only one who was screaming. Kearney did not know how long the Respondent was behind the desk. He never had any problems with the Respondent before the incident.

Sergeant Mervin Montalban

Montalban, a seven-year member of the Department, is currently assigned to the 42 Precinct. On July 1, 2008, he was assigned as desk officer. He testified that at approximately 10:55 a.m. that day, he received a telephone phone call from the Respondent informing him that she had been involved in a motor vehicle accident. She did not provide him with any details about the accident. The Respondent was scheduled to start her tour that day at 11:00 a.m. Prior

to her arrival at 1:00 p.m., she did not call Montalban back with any update. After her arrival, to Montalban's knowledge, the Respondent remained on duty for the rest of her scheduled tour.

On cross-examination, Montalban testified that he knew that the Respondent called 911 after the accident occurred and was directed to the 75 Precinct. He did not know, though, that the Respondent called the 42 Precinct to let the command know that she was at the 75 Precinct filing an accident report. He did not check the command log or telephone log to see if the Respondent ever made such a call.

Court Exhibit (CX) 1 is the Respondent's Activity Log for July 1, 2008. In it, she gave a detailed account of a car accident that occurred at 10:45 a.m. She noted that she left the 75 Precinct at 1:50 p.m., and arrived at the 42 Precinct at 2:40 p.m.

Lieutenant Thomas Devine

Devine, a 22-year member of the Department, was the ICO of the 42 Precinct. He testified that on July 1, 2008, he investigated a complaint made by Montalban that the Respondent was late for work that day. The Respondent's tour was scheduled to begin at 11:00 a.m. but, according to her Activity Log, she arrived at work at approximately 2:40 p.m.

Devine also investigated a supervisor's complaint that the Respondent was off post for 45 minutes prior to the conclusion of her tour. Specifically, this second complaint alleged that the Respondent was present in the station house at 6:50 p.m., but her tour was not scheduled to end until 7:35 p.m. Devine stated that he had personal knowledge of the Respondent being present inside the station house during that period because he was behind the desk at the time. In an Official Department Interview, the Respondent told Devine that she had been assigned to the

Crotona Park pool, and she reported back to the station house because the pool had closed for the day.

Devine testified that "Technically, prior to leaving your post, regardless of the assignment, you are supposed to call a supervisor and find out what duty you should perform next." Devine testified that when an officer is assigned to a post and her job is completed, she should contact the patrol supervisor or desk officer to be redeployed. To Devine's knowledge, the Respondent did not contact any supervisor that day to request permission to return to the command.

Devine stated that he expected officers specifically assigned to the Crotona Park pool to disperse throughout the park once the pool closed and to remain there until end of tour. Officers assigned specifically to the pool were supposed to stay in the pool area while the pool was open. Meanwhile, officers specifically assigned to the park were permitted to go into the pool area since the pool was within the park. In an informal interview with the Commanding Officer, Deputy Inspector Bugge, Devine learned that the Respondent and a couple of other officers had been assigned to the pool during the summer months and had been instructed to stay in the area of Crotona Park until the end of tour even if the pool had closed.

On cross-examination, Devine testified that, to his knowledge, the rule about officers assigned to the pool having to stay in the park was never put in writing. Bugge told Devine that he had personally instructed each of the Crotona Park pool officers to stay in the park, but Bugge did not say exactly when the instruction was given. The Crotona pool is a special summer assignment. Devine was not aware that the Respondent was assigned to the pool after it had already been open for several weeks. Devine did not ask the Respondent how long she had been

assigned to the pool, and did not recall asking her if she had been personally informed by Bugge on her responsibilities at the pool.

Lieutenant Mark Sedran

Sedran, a 22-year member of the Department, is currently assigned to the 42 Precinct. He testified that at approximately 3:00 p.m. on July 15, 2008, he went to inspect the Respondent at her post at the Crotona Park pool. He stated that he found the Respondent sitting at a desk in a Department of Parks and Recreation ("Parks Department" or "Parks") office. The Respondent's bulletproof vest was on a table, and there were two children between the ages of 12 and 14 in the room. Sedran informed the Respondent that she needed to wear her vest. Sedran could not recall exactly what the Respondent said in response, but the Respondent did acknowledge that she was supposed to be wearing the vest. The Respondent also informed Sedran that the children in the room were her daughter and another relative. Sedran told the Respondent that she should not have the children with her on her post while she is working because it would prevent her from doing her job properly. He then signed the Respondent's Activity Log and left the room.

Because Sedran made a wrong turn on his way out and ended up at a locked gate, he had to walk past the office again less than a minute later. At that point, he observed the Respondent placing her bulletproof vest inside a Parks Department locker. Sedran believed that the Respondent did not intend on wearing the vest and was putting it in the locker to hide it. He told the Respondent, "I told you to put it on, not put it away." Sedran could not recall if the Respondent answered in any way. When he returned to the command, he spoke to Bugge about the incident. As a result of his conversation with Bugge, Sedran returned to the pool to pick up the Respondent and the children.



On cross-examination, Sedran testified that he did not note in the Respondent's Activity Log or any other log that the Respondent was not wearing her vest. The Activity Log did not indicate that the Respondent was on meal when Sedran found her in the office. Sedran did not check the roll call to see if his visit to the Respondent's post coincided with her meal time. According to Sedran, the pool has one recess each day, and he did not know if the pool was open or closed while he was there.

Sedran testified that either that day or the next day a CD was prepared for the Respondent for not wearing her vest and having relatives on post. At the time of the incident, the Respondent had been working in the 42 Precinct for approximately six months. Sedran stated that he knew that the Respondent had been transferred out of her previous command for disciplinary reasons, but he did not know anything specific about the matter. Bugge never instructed Sedran to monitor the Respondent more closely because of her disciplinary record, nor did the supervisors at the 42 Precinct ever discuss with each other how they would deal with the Respondent.

Prior to the incident, Sedran stated, he had placed the Respondent in the Minor Violations Log. He could not recall how many times he placed her in the log or if he had issued her any previous CDs.

On re-direct examination, Sedran testified that shortly after the Respondent was transferred to the 42 Precinct, he told her that he knew she had problems in her previous command but she was starting in her new precinct with a clean slate. He told the Respondent this because he wanted her to know that he was not going to judge her based on what happened in the past. He stated that a police officer is required to wear her bulletproof vest anywhere outside of the station house, even if she is on meal.

Lieutenant Joseph Kourakos

Kourakos, a ten-year member of the Department, is currently assigned to the 42 Precinct. He testified that at approximately 3:30 p.m. on January 16, 2009, he was behind the desk supervising the "collection" of the day tour's activity. The day tour patrol supervisor, Sergeant Cynthia Rodriguez, was doing the actual collection, meaning that she was also behind the desk and was asking the officers as they entered the station house what kind of action they had taken that day. Kourakos observed Rodriguez question at least four or five officers, including the Respondent.

According to Kourakos, Rodriguez asked the Respondent in a "normal tone" of voice about her activity, saying "Hicks, what do you got"? The Respondent rolled her eyes and mumbled something that was incoherent. When Rodriguez repeated her question, the Respondent replied "as if she couldn't be bothered" and stated that she had written two parking summonses. The Respondent then walked away, and Rodriguez proceeded to question Police Officer Glendalee Pluas, who was the Respondent's partner that day, about her activity. Pluas told Rodriguez that she had not gotten any activity but that the Respondent had gotten two parking summonses and a Stop, Question, and Frisk report (UF-250).

At that point, Rodriguez readdressed the Respondent, asking her if she had gotten anything other than two parking summonses. According to Kourakos, the Respondent rolled her eyes in a "very disrespectful" manner and told Rodriguez, "I already told you what I got." The Respondent continued to roll her eyes when Rodriguez asked the Respondent again about her activity.

Kourakos, who was standing approximately ten feet away, asked the Respondent if she had prepared a UF-250. Kourakos believed she said yes. Rodriguez then asked the Respondent

to come behind the desk, and the Respondent replied, "I'm not talking to you. I'm talking to the lieutenant." The Respondent sounded annoyed, using a "couldn't be bothered" tone, but she was not yelling.

Kourakos testified that he told the Respondent to come behind the desk. He reprimanded the Respondent for being disrespectful, and the Respondent acknowledged that she was wrong and apologized. The Respondent explained to Kourakos that she had addressed Rodriguez in that manner because she felt that she was being disrespected, saying something along the lines of "nobody disrespects me."

Kourakos testified that Rodriguez was calm throughout the incident and did not yell. He conceded, though, that Rodriguez had to raise her voice a little in order to be heard by the Respondent after the Respondent walked away.

On cross-examination, Kourakos testified that at the time of the incident, he had been assigned to the 42 Precinct for two or three months. During his first week at the precinct, people pointed out to him the officers that they believed were problematic. One of those officers was the Respondent, and the "gossip" he heard about her was that he should keep an eye on her because she had been transferred out of the 40 Precinct for disciplinary reasons.

When Rodriguez engaged the Respondent for the second time, they were standing approximately ten feet apart from each other. The incident took place after the 4x12 platoon roll call had already commenced, and the Respondent's actions were "causing a scene." Kourakos did not believe it necessary to call the duty captain, however.

Sergeant Cynthia Rodriguez

Rodriguez, a six-year member of the Department, was assigned to the 42 Precinct and worked as the patrol supervisor on January 16, 2009. At approximately 3:30 p.m. that day, she was at the desk preparing the Recap Activity Sheet for the day tour. She explained that she prepared this document by asking each officer in the platoon what kind of police action the officer took that tour.

Rodriguez testified that when the Respondent approached the desk, she asked the Respondent about her activity. Rodriguez testified that she was not yelling, but because there were a lot of people in the area, she raised her voice slightly in order to be heard. As the Respondent walked past Rodriguez, she told Rodriguez that she had prepared two summonses. Rodriguez testified that the Respondent seemed upset.

Rodriguez then turned to the Respondent's partner, Pluas, to ask about her daily activity. Pluas told Rodriguez that she had not gotten any activity but that the Respondent had gotten two summonses and a UF-250.

At that point, Rodriguez called the Respondent's name and said "you didn't tell me you had a 250." Rodriguez testified that she was concerned because there would be a discrepancy in the final activity numbers. The Respondent answered by telling Rodriguez that she was not talking to her but was talking to the lieutenant, Kourakos. The lieutenant was standing next to Rodriguez and was, in fact, talking to the Respondent.

Rodriguez described the Respondent's tone of voice as having "an attitude" and her demeanor as "very unprofessional." Rodriguez asserted, "I have never had any issues with Hicks personally. I always tried to be very neutral. . . . I was shocked. There was a lot of officers there, it was change of tour. I didn't expect that." Rodriguez stated that it seemed like

everybody in the room stopped to observe what was going on. The Respondent made her feel very uncomfortable, and she nudged Kourakos. Kourakos called the Respondent over and spoke to her about the situation.

On cross-examination, Rodriguez testified that the entire incident lasted approximately five minutes. Rodriguez reiterated that she had never before had problems with the Respondent. She stated that she had never been advised by a supervisor to keep an eye on the Respondent or any other problematic officers.

On re-direct examination, Rodriguez testified that she addressed the Respondent that day for the purpose of recording her activity. She addressed the Respondent a second time because there was a discrepancy between what the Respondent had originally told her and what Pluas told her. According to Rodriguez, she was later commended by Kourakos for keeping quiet and not continuing an argument with the Respondent.

#### The Respondent's Case

The Respondent called Police Officer Glendalee Pluas, Police Officer Eddie Cabrera, and Police Officer Brian McGuckin as witnesses, and testified on her own behalf.

#### Police Officer Glendalee Pluas

Pluas, an eight-year member of the Department, is currently assigned to the 42 Precinct. On January 16, 2009, she was assigned to patrol with the Respondent. She explained that she did not usually partner with the Respondent, but her regular partner had been assigned to something else that day. Pluas testified that when she entered the station house at the end of tour, Kourakos called her over to the desk and asked her about her activity. She informed Kourakos that she did

not have any activity and explained to him that the Respondent had prepared all of the paperwork that day because the Respondent needed activity for the month. Pluas told Kourakos that the Respondent had prepared two summonses and a UF-250. At that point, Kourakos commented that the Respondent had not said anything to him about a UF-250. He then turned to the Respondent, who was standing nearby at the telephone switchboard, and informed her that a UF-250 counts as activity. The Respondent laughed and said that she was aware of that.

According to Pluas, it was at this point in the conversation that Rodriguez loudly called the Respondent's name and waved for her to come forward. Rodriguez was standing behind the desk approximately 12 feet from Kourakos. The Respondent, who was standing closer to Kourakos than to Rodriguez and was in the midst of a conversation with Kourakos, told Rodriguez that she was talking to the lieutenant. Rodriguez then called the Respondent's name again even more loudly than before and motioned with her hand, and the Respondent repeated that she was talking to the lieutenant. At that point, Pluas exited the room. She explained that she believed the situation was about to escalate, and she did not want to be a witness to it. She stated that Rodriguez was the only one that day that she observed raise her voice and act unprofessionally. Because the incident took place during the change of tours, the station house was very busy. Pluas could not recall if Rodriguez' actions caused people to stop and take pause of what was happening.

On cross-examination, Pluas testified that the Respondent entered the command approximately ten seconds before she did. Pluas did not know if Rodriguez addressed the Respondent during that period. Pluas understood that when Rodriguez called the Respondent's name and gestured with her hand, Rodriguez wanted the Respondent to come forward. Even

though Rodriguez summoned the Respondent twice, Plusas did not see the Respondent ever move toward Rodriguez.

Police Officer Eddie Cabrera

Cabrera, a seven-year member of the Department, is currently assigned to the 42 Precinct. He testified that when he entered the station house at the end of tour on January 16, 2009, he conversed with the Respondent at the desk. Officers from the day tour and the third platoon were in the area, as was Kourakos. At one point, Kourakos asked the Respondent about her activity, and the Respondent replied that Plusas had reported the activity for the day. Rodriguez, who was standing ten to twelve feet away, then asked the Respondent for her monthly activity. According to Cabrera, Rodriguez yelled in a nasty tone, "Hicks, come over, come over here." At the time, the Respondent was still speaking to Kourakos about her activity, and she told Rodriguez that she was speaking to the lieutenant. Cabrera testified that Rodriguez then started to scream again, telling the Respondent, "Come over here now." Cabrera left the area at that point. He explained that he knew the situation was going to escalate. He stated that at no point did he hear the Respondent raise her voice, nor did he observe Kourakos intervene between Rodriguez and the Respondent. He testified that he had been talking to the Respondent for a couple of minutes before Rodriguez started to yell. At no point during that period did he hear Rodriguez call for any other officer to approach the desk. During the incident, people stopped to watch what was going on.

On cross-examination, Cabrera testified that Rodriguez did not ask him that day about his activity. He did not observe the Respondent comply with Rodriguez' direction to come over.



Police Officer Brian McGuckin

McGuckin, a 14-year member of the Department, is currently assigned to the 40 Precinct, where he has been the union delegate on and off for the last ten years. On May 30, 2007, he was assigned as assistant desk officer. He testified that toward the end of the second platoon that day, he observed the Respondent enter the station house. She seemed upset and came behind the desk asking for the Commanding Officer's telephone number. The Respondent was in plainclothes at the time, and McGuckin thought she was off duty. McGuckin stated that Falkner followed the Respondent into the station house. According to McGuckin, Falkner seemed irate and was yelling for the Respondent to get back from behind the desk. Because it was the change of tours, there were many people in the area, including Hoban and Bravo. McGuckin testified that when Hoban instructed the Respondent to go around to the other side of the desk, the Respondent complied. She then waited for McGuckin to give her the telephone number that she had been looking for. When the Respondent started to walk out of the command, Falkner stepped in front of her. When the Respondent stepped to the side, Falkner also stepped to the side, blocking the Respondent's path.

McGuckin testified that the Respondent asked Falkner in an annoyed tone of voice, "What are you doing? I'm off duty. Why are you harassing me?" According to McGuckin, Bravo intervened, yelling at Falkner, "Mary, stop it. Order her to stand by." As per Bravo's order, Falkner instructed the Respondent not to leave. The Respondent stepped outside, and McGuckin followed after her. The Respondent knew that she had been ordered to remain at the command, and she waited outside for further instruction. McGuckin testified that at no point during the incident did he observe the Respondent act disrespectfully or inappropriately toward a

supervisor. As for Falkner's behavior, McGuckin stated, "It looked like she was going to fight with [the Respondent]. She just wouldn't let [the Respondent] walk by. . . . It was ridiculous."

On cross-examination, McGuckin testified that he was not the union delegate at the time of the May 2007 incident. He stated that he first saw the Respondent that day at approximately 4:00 p.m. A police officer is supposed to request permission to go behind the desk, but McGuckin did not hear the Respondent ask permission before going behind the desk in search of the Commanding Officer's telephone number. McGuckin recalls Hoban instructing the Respondent to leave the desk only one time. He at no point heard Bravo or Falkner order the Respondent to go to the ICO's office.

On re-direct examination, McGuckin testified that the Respondent left from behind the desk as soon as Hoban instructed her to do so.

On re-cross-examination, McGuckin stated that although Falkner was behaving confrontationally, he did not observe any physical contact take place between Falkner and the Respondent.

#### Respondent Police Officer Vanessa Hicks

The Respondent, a seven-year member of the Department, is currently assigned to the 42 Precinct. She worked in the 40 Precinct until February 2008, which is when she was transferred out of that command due to problems she was having with Falkner. According to the Respondent, these problems began when Falkner started working at the 40 Precinct in 2006. The Respondent described a specific incident that involved Falkner embarrassing her by yelling at her in the presence of other officers and civilians. According to the Respondent, Falkner then told lies about her to the Commanding Officer, which led to the Respondent's tour being

changed. After that, Falkner would go through the roll call to check if the Respondent signed out. Falkner would often put the Respondent in the Minor Violations Log or issue her CDs without justification. Falkner once entered the Respondent in the Minor Violations Log on a day that the Respondent was not even on duty. The Respondent spoke to an Inspector Nicholson and Smalls (her immediate supervisor) about the problems she was having with Falkner. The Respondent stated that Falkner and Smalls almost had an argument about the situation. The Respondent did not have problems with any other supervisors in the command.

The Respondent testified that on May 30, 2007, she was assigned to work a 7:05 a.m. by 3:40 p.m. tour. She parked her personal vehicle that morning in an unmarked spot in front of the station house. She stated that she did not park in the spot that was marked for visitors. She explained that there are many parking spots on the block in front of the station house, some of which are marked for Department vehicles and only one of which is marked for visitors. According to the Respondent, when she entered the station house at approximately 1:15 p.m., Falkner approached her and asked her why her car was parked in a spot that was designated for Department vehicles. The Respondent explained to Falkner that her car was not parked in such a spot, and she then ran out of the station house because a 10-85 (officer needs assistance) came over the radio. According to the Respondent, the spot where she was parked was open to any vehicle. At the time, she had been working at the 40 Precinct for five years, and she had never before been questioned for parking in that spot. The Respondent testified that later in the day, she returned to the station house twice for job-related reasons. She did not, however, recall being summoned back to the station house by the Communications Section, and she did not have any further conversation with Falkner about the car until she returned to the station house at the end of tour.

The Respondent testified that because she had a late job, she did not get back to the command until 3:50 p.m., at which point she changed out of uniform. While still in the locker room, a Police Officer Williams called the Respondent to inform her that Falkner had deliberately blocked in her car. On the way out of the station house, the Respondent saw Falkner in the muster room. The Respondent thanked Falkner for blocking her in and kept walking. The Respondent walked outside and got into her car. Falkner followed her outside and was saying something, but the Respondent could not hear what she was saying from inside the car. Falkner then stepped in front of the Respondent's vehicle, and the Respondent could hear Falkner screaming at the top of her lungs. The Respondent got out of the car and told Falkner, "Why are you harassing me? This is harassment. I need a delegate or a captain. I have to go home to my daughter. Why are you stopping me from going home? I am already end of tour." The Respondent then walked back inside the station house and walked behind the desk to get the Commanding Officer's telephone number. Falkner followed the Respondent to the desk and yelled at the Respondent to go to the office. The Respondent replied that she did not have a problem going to the office, but she did not want to be alone in the office with Falkner. She testified that she told Falkner this because she was afraid that Falkner would initiate physical contact. She tried explaining to Hoban, who was at the desk, that she needed somebody to help her. The Respondent testified, "All they heard was [Falkner] screaming and yelling, so they kind of sided with her without knowing what was going on."

The Respondent testified that she was behind the desk for a couple of seconds. She was able to get the Commanding Officer's number, and she called him on her cell phone. Meanwhile, Falkner continued to direct the Respondent to go into the office. The Respondent replied, "I just need a delegate or somebody in there with me. I am off duty and you are

harassing me. This doesn't even make sense." The Respondent then walked toward the exit of the station house, and Falkner blocked her path. The Respondent stated that Falkner got so close to her that their bodies touched. At that point, Bravo screamed at Falkner to get out of the Respondent's way. According to the Respondent, Bravo had to scream at Falkner a second time before Falkner moved away. Bravo directed the Respondent to stand by, and the Respondent waited in front of the station house for further instruction. While out front, she spoke with McGuckin, Hoban, and Smalls. At no point did Bravo or Falkner come outside and instruct her to go to the ICO's office. After waiting for 40 minutes, Smalls informed the Respondent that she had permission from Bravo to put in an overtime slip and leave. The Respondent left the command that day at 4:30 p.m. When the Respondent reported to work the next day, nobody mentioned the incident to her. After that day, though, Falkner would change the Respondent's assignment on the roll call to the hospital or a fixed post.

The Respondent testified that when the Employee Management Division told her that she was going to be administratively transferred out of the 40 Precinct, she was also told that she would be able to work day tours in her new command. After she started working at the 42 Precinct, however, she expressed her desire to work day tours and was told by the administrative lieutenant, Lieutenant Argonzoni, that she would be working a 6:00 a.m. by 2:30 p.m. tour and would have to put in for another transfer if that schedule did not work for her. The Respondent was ultimately assigned by Sedran to the Crotona Park detail. When the Respondent started the detail, other officers had already been working in the park for several weeks. According to the Respondent, she never had a conversation with Sedran about the detail before she started it. The only instruction she received was a pamphlet from Argonzoni about the summons activity she

was expected to produce while on her post. She worked once in the park but was specifically assigned to the pool the rest of the time.

On July 1, 2008, the Respondent was assigned to work an 11:00 a.m. by 7:35 p.m. tour. As she was driving to work from her home in Brooklyn, she got into a car accident within the confines of the 75 Precinct. After the accident, she called the 42 Precinct desk three or four times. The first time she spoke to Montalban, informing him of the accident and that she was waiting for further instructions from a 75 Precinct lieutenant. The Respondent stated that in subsequent telephone calls she spoke to a Sergeant Gonzalez and a Sergeant Enriquez, letting them know what was going on. The Respondent waited in the 75 Precinct for approximately two hours for an accident report to be prepared. During her time there, she spoke to the 75 Precinct Commanding Officer. She learned that summonses had been issued to the driver of the other vehicle involved in the accident. When she was released from the 75 Precinct, she called the 42 Precinct again to let them know that she was on her way. She arrived at work at approximately 2:40 p.m. After changing into uniform, she went to see Bugge and showed him a copy of the accident report and the 911 call that she had made about the accident. She then reported to her post at the pool. When the pool closed at approximately 6:45 p.m., the Respondent returned to the station house, where Gonzalez reassigned her to the park. The Respondent went to the park and helped clear out basketball players until her tour ended at 7:35 p.m. According to the Respondent, she had been previously instructed by Montalban that the park and the pool were distinct assignments and that an officer assigned to the pool would get a CD if she went outside of the pool area.

On July 15, 2008, the Respondent was assigned to the pool with a meal time at 3:00 p.m. She took her meal inside the office at the pool, and she took off her vest while she ate. She

believed it was acceptable to take off her vest because at the time the pool was closed, the pool area was locked, and the only people present were police officers and Parks Department officers. Her daughter and niece were also there, and the Respondent explained that they had been in the area for a cookout and stopped by to see her for a little while. The Respondent testified that when Sedran approached her, he yelled at her about not having her vest on. The Respondent acknowledged to Sedran that she should have been wearing her vest, and Sedran then walked away. According to the Respondent, Sedran returned a second later and became upset again about the vest. The Respondent stated that she had the vest in her hand at the time and was about to go to the bathroom to put it on.

On January 16, 2009, the Respondent worked with Pluas. When the Respondent entered the station house at the end of tour, Rodriguez started to repeatedly scream her name. When the Respondent approached the desk to see what Rodriguez wanted, Rodriguez asked her how many summonses she wrote that day. The Respondent stated that she had a shocked look on her face because she did not understand why Rodriguez had summoned her to the desk in that manner. The Respondent informed Rodriguez that she had written two summonses, and then she walked away to sign out. The Respondent explained that most days during that time period, officers were asked about their activity when they returned to the station house at end of tour.

The Respondent testified that while she was signing out, Kourakos and Pluas were engaged in conversation. Kourakos, who was standing behind the desk next to Rodriguez, then turned to the Respondent and asked her if she had prepared a UF-250 that day. The Respondent replied that she did prepare a UF-250 and was about to put it in the box. While the Respondent was still talking to Kourakos about her activity, Rodriguez yelled her name again. The Respondent and Rodriguez were approximately 12 feet apart at the time, and there were other



officers in the area. The Respondent was shocked because Rodriguez was yelling her name in a nasty tone, and everybody turned to look at Rodriguez. Rodriguez was frowning and looked annoyed. The Respondent explained to Rodriguez that she was in the middle of a conversation with Kourakos. After Rodriguez yelled the Respondent's name a second time, Kourakos ordered the Respondent to approach the desk. Kourakos and Rodriguez were standing behind the desk together, and Kourakos told the Respondent that she needed to be a little more professional. The Respondent replied that she did not understand why Rodriguez had treated her so disrespectfully. The Respondent had never before had a problem with Rodriguez.

On cross-examination, the Respondent testified that there was nothing painted on the ground in the spot where she parked her car on May 30, 2007. In an August 28, 2007, Official Department Interview about the incident, however, the Respondent stated that she parked "in the visitor's spot." She explained that she referred to the location as "the visitor's spot" because visitors did park there, as it was unlabeled and available to anyone. In the Official Department Interview, however, the Respondent stated that she did not have authority to park there. The Respondent reiterated that when Falkner approached her and asked her why her car was parked in a spot that was designated for Department vehicles, she explained to Falkner that her car was not parked in such a spot. She also told Falkner that she parked there because there were no available spots in the parking lot. According to the Respondent, Falkner never ordered her to move the car out of the spot. Both Falkner and Bravo directed the Respondent to go to the ICO's office, but she never went. The Respondent believed that Falkner blocked her car just to cause a confrontation. She stated that Falkner commonly initiated confrontation with officers. The Respondent testified that as a result of the incident, she filed a complaint against Falkner with the Office of Equal Employment Opportunity.

The Respondent testified that while assigned to the 40 Precinct, her “main problem” was with Falkner, but she had also had problems with other supervisors. She had received CDs from other supervisors, but she could not recall how many. The previous incident involving Falkner embarrassing the Respondent by yelling at her in the presence of other officers and civilians resulted in the Respondent being issued a CD for being disrespectful and combative. According to that CD, when Falkner instructed the Respondent to do the radios, the Respondent replied, “I am doing an accident report. I will get to the radios later. I told you I will do the radios when I’m done with the report, and I’ll come to you when I’m finished. I don’t need this. I have a headache.” The Respondent stated that the narrative on the CD sounded like Falkner’s lies. She further stated that even though she was aware of her right to contest the CD, she signed the CD because her Commanding Officer told her that she would be put back on day tours if she signed it. According to the Respondent, Falkner warned new sergeants in the precinct to watch out for her. The Respondent has never had any negative interaction with Kearney.

The Respondent testified that she was never instructed by Bugge before July 1, 2008, that after the pool closed she was to stay inside Crotona Park. She conceded that on July 15, 2008, when Sedran ordered her to put on her vest, she did not immediately go to the bathroom to put it on. She explained that she was not going to walk away from Sedran while he was still screaming at her. When Sedran finished screaming at her, she attempted to put the vest on, but she was stopped by Sedran again on her way to the bathroom. The bathroom was 15 to 20 feet away.

## FINDINGS AND ANALYSIS

### Disciplinary Case No. 83446/07

The first set of specifications against the Respondent concern the events of May 30, 2007, when an incident took place between her and Sergeant Mary Falkner. Clearly the two did not get along, but the Court generally credits Falkner. The Respondent's witnesses presented an account of Falkner being so wild and out of control as to nearly physically attack the Respondent, such that Bravo had to yell at Falkner to stop and get out of the way.

Bravo was a supervisor of both the Respondent and Falkner, and as such was the most neutral of the witnesses to the incident. Bravo testified that Falkner was neither flustered nor aggravated, but was speaking authoritatively – as a supervisor in the Department sometimes has to speak. Bravo stated that it seemed like the Respondent was determined to leave the station house and Falkner was about to step in front of her, so to avoid a confrontation, he told Falkner “just to step aside.” Additionally, Sergeant James Kearney, who was also behind the desk, testified that while the Respondent was “saying she was being harassed and screaming and yelling in general,” Falkner was “relatively calm. She was being professional.” In short, the Court did not detect, either from demeanor on the stand or from the testimony of the witnesses, any sign of the kind of bias that would lead Falkner to lie about events.

### Specification No. 1

In the first specification, the Respondent is charged with disobeying the order of Falkner, the 42 Precinct assistant ICO, to move her personal vehicle from a spot outside the station house that had been marked for visitors. Falkner testified that the spot had yellow lines and “visitor” painted on the ground. The Respondent testified that she was in a spot in front of the station house, but it was “unmarked,” as opposed to others marked for “RMP,” and the one “that’s very

faded that says visitor.” She testified that Falkner asked why she was parked in an RMP spot. The Respondent denied to Falkner that she had done so, then “ran out” of the precinct because of a 10-85 radio message (requesting additional units). The Respondent testified, however, that when Falkner asked her about the issue, the Respondent “did refer to it as visitor spot because that was the spot that visitors, RMP’s and cops parked in because those were the only unmarked spots that were in front of the precinct.” The Respondent denied that Falkner ordered her to move the car; Falkner testified that she instructed the Respondent to do so, and blocked her in when she saw that she had not.

On cross-examination, the Respondent admitted, “There is a confusion on what that spot is. No one ever written in stone what spot it is. What I believed it to be, I believed it could have been a visitor spot. It was the closest to the actual marked visitor’s spot, but wasn’t nothing in writing, [Department of Transportation] sign, or on the floor that said it was a visitor spot. I believed it could have been.” Most notably, though, the Respondent agreed that when asked at an Official Department Interview where her vehicle was parked, she answered, “In the visitor’s spot.” Moreover, when asked, “Is that a spot for police officers or people that are visiting the precinct?,” she answered, “Visiting,” and admitted to the investigator that she did not have authority to park there. She stated in the interview that she parked there because there was no room in the lot and she did not want to get in trouble for double parking.”

The Court also notes the Respondent’s reference to the “very faded” visitor marking in paint, a remark which seemed incongruous with her claim that she was not parked there.

Thus, the Court finds that the spot where the Respondent’s car was parked was reserved for visitors. Further, the Court credits Falkner’s testimony that she ordered the Respondent to move the car. The Court notes that Falkner’s blocking in of the vehicle is consistent with an

attempt on her part to preserve the evidence that the Respondent had parked there and disregarded an order to move. Because the Respondent did not move her car after Falkner ordered her to, the Court finds her Guilty of Specification 1.

### Specification No. 2

The second specification charges the Respondent with discourtesy when she said to Falkner, "No, I'm off duty and I'm leaving" in a "belligerent and hostile manner" after Falkner ordered her to go to her office. Falkner testified that she blocked the Respondent's car in. When the Respondent sarcastically "thanked" her for doing so, Falkner responded in kind, "you're welcome," and ordered her to go to her office, which she shared with Lieutenant Jose Bravo, the ICO. According to Falkner, the Respondent answered, "No, I'm off duty," and walked out of the station house. The Respondent testified that after she went off duty and left for her car, Falkner confronted her outside, "[s]creaming on the top of her lungs stand by, stand by." The Respondent said, "why are you doing this to me. I'm off duty. . . . Why are you harassing me? This is harassment. I need a delegate or a captain. I have to go home to my daughter. Why are you stopping me from going home. I am already end of tour." According to the Respondent, when the confrontation continued inside the station house, Falkner ordered her to go to the ICO's office. McGuckin, a police officer who testified for the Respondent, observed the Respondent trying to walk out of the command and Falkner blocking her. In an "annoyed" tone, the Respondent said, "what are you doing? I'm off duty. Why are you harassing me?"

The Court finds that the Respondent made the charged statement, in sum and substance, after Falkner ordered her to go to the ICO's office. The Court further finds that the Respondent's tone was "belligerent and hostile." All accounts showed that the Respondent was very upset. In that frame of mind, it was "belligerent and hostile" for the Respondent to say to Falkner, who

had just ordered her to go to the ICO's office, that she was off duty and was going home, and imploring as to why Falkner was "harassing" her. As noted supra in Specification No. 1, the Court rejects the Respondent's argument that it was Falkner doing the belligerent and hostile yelling. Thus, the Court finds that the Respondent was discourteous to Falkner and finds her Guilty of Specification 2.

### Specification No. 3

The Respondent admitted, as charged, that both Bravo and Falkner ordered her to go to the shared ICO's office. She stated that after she was told to "stand by," she "was awaiting to go, but they never told me to go back. I was waiting to go into the ICO's office. That's why I stood by." Thus, the Respondent waited for 50 minutes until Bravo told her she could leave and put in for the overtime.

The Court rejects this explanation as to why she did not go to the ICO's office. The order to "stand by" meant that she was not off duty and could not leave. It did not mean disregard the previous order to go the ICO's office. In any event, as Bravo testified, when he ordered her to the office, she continued to claim that she was being harassed. That demonstrates a refusal to follow a correctly-understood, lawful order. Therefore, the Court finds the Respondent Guilty of Specification 3.

## Disciplinary Case No. 85051/09

### Specification No. 1

The Respondent is charged with being absent from her assignment, without permission or police necessity, during two periods of time on July 1, 2008: 11:00 a.m. to 2:40 p.m., and 6:50 p.m. to 7:35 p.m. The Respondent had been assigned to the 42 Precinct at this time, and her

scheduled tour of duty that day was 1100x1935. Sergeant Mervin Montalban, the desk officer, stated that at about 10:55 a.m. he received a phone call from the Respondent stating that she had been in a minor motor vehicle accident. Montalban stated that she gave him no further details and did not call with any further updates. The Department claimed that the Respondent did not receive permission to be late for work. Yet Montalban also testified on cross-examination that he “bec[a]me aware July 1, 2008” that the Respondent had been in a car accident, had called 911 and said that she was a member of service that had been in an accident, that she was directed by 911 to go to the 75 Precinct, and that she went to the 75 Precinct to file a report. The Respondent detailed the accident in her Activity Log (CX 1).

Under these circumstances, the Court rejects the Department’s claim that she had not received permission to be late for her tour. Montalban’s receipt of this information, without any evidence that he said anything further to the Respondent at that time, leads to the conclusion that the Respondent had permission to be late, even if it was not explicitly stated. This conclusion is bolstered by the Respondent’s testimony that she called two additional sergeants both of whom she named – later that day and updated them as to what was going on. Thus, the Respondent is found Not Guilty of being absent without permission from 11:00 a.m. to 2:40 p.m. In light of this finding, the Court will not address the second period of time.

#### Specification No. 2

In the second specification of the second Case against her, the Respondent is charged with failing to comply with a lawful order. Lieutenant Mark Sedran, of the 42 Precinct, testified that on July 15, 2008, he went to the Crotona Park pool to inspect the Respondent, who was on post there. Sedran observed the Respondent sitting in a Parks Department office, and her bulletproof vest was on a table. There were two children of 12 to 14 years old with her; the



Respondent told Sedran one was a daughter and one another relative. Sedran “instructed her that she has to wear her bullet proof vest.” Sedran left, but when he came back after taking a wrong turn, he saw that the Respondent had not put on the vest but instead was putting it into a Parks Department locker. He re-instructed her to put it on and returned to the command. In her testimony, the Respondent claimed that Sedran screamed at her to put on the vest. He left, and as she was leaving for the bathroom to put the vest on, he came back and yelled at her again.

The Court finds the Respondent Guilty. Her testimony was not credible. It is highly unlikely that Sedran would have “screamed” at the Respondent in front of her daughter and another child. Nor did it make sense that Sedran would have left the Parks office, only to return in so short a time that the Respondent did not have enough time to put on the vest. Accordingly, the Court credits Sedran’s testimony that he was gone long enough for the Respondent to comply with his orders.

### Specification No. 3

The final specification charges the Respondent with discourtesy as a result of another confrontation at the front desk between the Respondent and a supervisor. The incident arose on January 16, 2009, when Sergeant Cynthia Rodriguez, a patrol supervisor, was “collecting” the daily activity from officers who were returning at the end of their tours. Two witnesses testified for the Department, and three for the Respondent, but the gist of all the accounts is that there was some discrepancy between what the Respondent and her partner, Police Officer Glendalee Pluas, each said they had as activity that day. The Respondent was speaking to Lieutenant Joseph Kourakos, who was also at the desk, when Rodriguez asked the Respondent a second time about her activity. All five of the witnesses testified that the Respondent told Rodriguez that she was talking to the lieutenant.

The Court again finds the lieutenant, Kourakos, to be the most neutral and credible witness as to what occurred. He stated that the Respondent told Rodriguez, "I'm not talking to you, I'm talking to the lieutenant." He characterized the Respondent as "annoyed," but she did not yell. Nevertheless, he reprimanded her for her disrespect. She apologized, but stated that spoke to her this way because she felt she was being disrespected.

The Respondent admitted that Kourakos told her that she needed to be more professional. She told Kourakos that she did not understand why Rodriguez was being disrespectful toward her. The Respondent did not testify that she apologized. Nevertheless, in context, telling Kourakos that she did not understand why Rodriguez was disrespecting her was an admission that she knew she had spoken discourteously toward the sergeant. Accordingly, the Respondent is found Guilty of Specification 3.

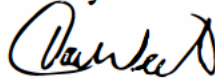
### PENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined. See Matter of Pell v. Board of Education, 34 N.Y.2d 222 (1974). The Respondent was appointed to the Department on July 21, 2002. Information from her personnel folder that was considered in making this penalty recommendation is contained in the attached confidential memorandum.

The Respondent has been found Guilty of several acts of discourtesy toward supervisors and disobedience of their orders. The testimony revealed that when supervisors gave the Respondent simple directives consistent with the proper and smooth running of the Department, the Respondent tended to react as though she was being personally attacked. The Court notes the number of distinct incidents of discourtesy, coupled with the Respondent's "insubordinate and

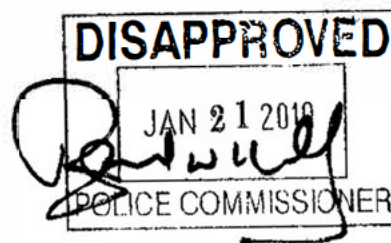
disingenuous demeanor . . . unacceptable within our para-military organization,” *Disciplinary Case No. 81635/06*, Police Commissioner’s memorandum. In light of prior cases, see *Disciplinary Case No. 83050/07* (sergeant forfeited 20 vacation days for, inter alia, crumpling a written order that had just been given to her by a lieutenant regarding proper way to answer command phones); *Disciplinary Case No. 78287/02* (after plea, 6-year member with no prior record forfeited 21 suspension days already served for discourtesy to a supervisor; the member was on limited duty and assigned to clerical; having become upset with the assignment, she screamed obscenities at supervisor in presence of other Department members), and the Respondent’s work history, the Court recommends that the Respondent forfeit 40 vacation days as a penalty.

Respectfully submitted,



David S. Weisel

Assistant Deputy Commissioner Trials



POLICE DEPARTMENT  
CITY OF NEW YORK

From: Assistant Deputy Commissioner - Trials  
To: Police Commissioner  
Subject: CONFIDENTIAL MEMORANDUM  
POLICE OFFICER VANESSA HICKS  
TAX REGISTRY No. 931731  
DISCIPLINARY CASE Nos. 83446/07 & 85051/09

The Respondent received an overall rating of 3.5 "Highly Competent/Competent" on her last three annual performance evaluations. In her seven years of service, [REDACTED]  
[REDACTED]  
[REDACTED] d she was placed on Level-II Discipline Monitoring in January 2008.  
The Respondent has no prior formal disciplinary record.

For your consideration.



David S. Weisel  
Assistant Deputy Commissioner – Trials